

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

LEANTHONY T. WINSTON, #60114,

Petitioner,

v.

ACTION NO. 2:18cv577 (Lead)
ACTION NO. 2:20cv423 (Consolidated)

HAROLD W. CLARKE,

Respondent.

FINAL ORDER

Petitioner Leanthony T. Winston (“Winston”), a Virginia inmate, submitted an amended *pro se* petition, pursuant to 28 U.S.C. § 2254 on July 20, 2020. ECF No. 59. Winston alleges his federal rights were violated when he was prosecuted in the Circuit Court for the City of Norfolk between 2014 and 2016 for offenses occurring on October 18, 2014. *Id.* Winston challenges his convictions in the Circuit Court for the City of Norfolk for distribution of a Schedule II narcotic and possession of cocaine, for which he was sentenced on July 14, 2017, to five years and five months, with two years suspended. *Commonwealth v. Winston*, Nos. CR 16001001-00 and CR 16001001-01 (Va. Cir. Ct. July 14, 2017). Winston also challenges his conviction for possession of a firearm by a non-violent felon, for which he was sentenced on July 28, 2017, to three years in prison with one year suspended. *Commonwealth v. Winston*, No. CR 15002834-00 (Va. Cir. Ct. July 28, 2017).

This matter was referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United

States District Court for the Eastern District of Virginia. On December 23, 2020, the undersigned prepared a report and recommendation, recommending that respondent's second motion to dismiss be granted, Winston's motions for temporary restraining order be denied, Winston's motion for judgment be denied, and that Winston's amended petition be dismissed with prejudice. Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. On February 11, 2021, the Court received Winston's objections to the findings and recommendations made by the Magistrate Judge. ECF No. 101.

The Court, having reviewed the record and examined the objections filed by Winston to the report and recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that respondent's second motion to dismiss, ECF No. 67, is **GRANTED**, Winston's motions for temporary restraining order, ECF Nos. 63, 64, 94, are **DENIED**, Winston's motion for judgment, ECF No. 73, is **DENIED**, and that Winston's amended petition, ECF No. 59, is **DISMISSED WITH PREJUDICE**.

On January 4, 2021, after the report and recommendation was filed, Winston filed a motion for temporary restraining order challenging a more recent arrest for which he is facing federal prosecution and requesting "some type of process to prevent further injury." ECF No. 96 at 3–5. Winston's most recent arrest is not the subject of his current federal habeas petition, and the Court **ORDERS** that the motion for a temporary restraining order, ECF No. 96, is **DENIED**.

Finding that the basis for dismissal of Winston's section 2254 petition is not debatable, and alternatively finding that Winston has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts.; *Miller-El v. Cockrell*, 537 U.S. 322, 335–

38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Winston is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts. **If Winston intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Winston may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk shall mail a copy of this Final Order to Winston and counsel of record for respondent.



~~Robert G. Doumar~~
Robert G. Doumar
Senior United States District Judge

Norfolk, Virginia
February 19, 2021